HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION NO.11342 OF 1995

Between:
Sri Ch.Ankanna

..... Petitioner

AND

The Depot Manager, APSRTC,
Guntakal Depot, Guntakal,
Ananthapur District,
and 4 others.

.....Respondents

::ORDER::

Counsel for the Petitioner : Smt.Rajeswari for Sri E.Ayyapu Reddy

Counsel for Respondents 1to3: Sri Vinayaka Swamy

Dated 19.9.2006

In India, ticket less travel is a widespread phenomenon. This menace has badly affected the economy of two well-known instrumentalities of the State i.e. Railways and State Road Transport Corporations, which have the largest network of public transport. The persons holding the posts of conductor contribute in a big way in ticket less travel in the Railways as well as buses of the State Transport Corporations. In majority of cases, they collect the fare from the passengers but do not issue the tickets. The impact of this widespread mode of corruption is that the Railways and the Public Transport Corporations suffer loss of crores of rupees per annum.

As and when action is taken against the culprits, all possible defences are put forward to persuade the adjudicatory forums constituted under the Industrial Disputes Act, 1947 (for short 'the Act') to give relief to these wrongdoers. In late 70s, 80s and early 90s, the doctrine of proportionality was invoked by the superior courts in large number of cases resulting in reinstatement of the conductors of State Transport Corporations found guilty of corrupt practices, but now this trend has decisively changed. In the last five years, the Supreme Court has consistently ruled against the invoking of doctrine of proportionality or Wednesbury principle for judicial interdiction with the employers domain to punish employees found guilty of corruption or gross misconduct. In the cases of ticket less travel, the Supreme Court has disfavoured the exercise of power even by the Industrial Tribunals and Labour Courts under Section 11-A of the Act. For the sake of reference, mention may be made to the judgments of the Supreme Court in **Karnataka State Road Transport Corporation v. B.S.Hullikatti**[1]; **Regional Manager, Rajasthan State Road Transport Corporation v. Ghanshyam Sharma**[2]; **Regional Manager, Uttar Pradesh State Road Transport Corporation v. Hoti**

Lal[3]**; Divisional Controller, KSRTC v. A.T.Mane**[4]**; and V.Ramana v. Andhra Pradesh State Road Transport Corporation**[5]**.**

In the last mentioned decision, the Supreme Court reviewed several judicial precedents on the subject and held that a person found guilty of breach of trust should be visited with punishment of removal from service and that the Court should not readily interfere with the discretion exercised by the employer to impose severe penalty on an employee found guilty of embezzlement, misappropriation, misfeasance or an act or omission, which may have caused pecuniary loss to the employer.

I have prefaced disposal of this petition by noticing the proposition of law and some decisions because after perusing the record of the case and hearing learned counsel for the parties, I am convinced that Chairman-cum-Presiding Officer of Industrial Tribunal-cum-Labour Court, Ananthapur (for short 'the Tribunal') did not commit any error by refusing to nullify the order passed by the Depot Manager, Andhra Pradesh State Road Transport Corporation, Guntakal Depot (respondent No.1) for imposing the penalty of removal from service on the petitioner who was found guilty of grave misconduct viz., carrying of 16 passengers without issuing tickets.

For deciding the writ petition, which has been filed for quashing award dated 23-07-1993 passed by the Chairman of the Tribunal and orders dated 27-07-1982, 21-06-1984 and
20-04-1990 passed by respondent No.4, the Divisional Manager, Andhra Pradesh State Road Transport Corporation, Ananthapur (respondent No.2) and the Regional Manager, Andhra Pradesh State Road Transport Corporation, Nellore (respondent No.3) respectively, it will be useful to notice the relevant facts.

While the petitioner was posted as conductor at Guntakal Depot of the Corporation and was on duty on Holagunda route, bus No.APZ-1901 was checked by the officials of the Corporation at stage No.10. The checking party found that the petitioner had failed to collect the fare and issue tickets to 16 adults and one child, who were travelling from Yellarthi. The report prepared by the checking party led to initiation of an enquiry against the petitioner on the following charges:

"1. For having violated the rule issue and start.

2. For having failed to collect the fare and issue tickets to a batch of sixteen adults and one chargeable child travelling from Ellarthi and found alighting at Alur without tickets,

ex-stages 15 to 10.

3. For having closed the tray numbers of all denominations against stage No.10 without completing the above ticket issues."

The enquiry officer submitted report with the finding that the charges levelled against the petitioner have been proved beyond reasonable doubt. Thereafter, respondent No.4 passed order dated 27-07-1982 whereby he removed the petitioner from service. The appeal and review filed by the petitioner against the order of punishment were dismissed by respondent Nos.2 and 3 respectively.

In the application filed by him under Section 2-A (2) of the Act, the petitioner pleaded that he had not committed any misconduct. He claimed that on 24-01-1982, there was a big religious festival and on that account, there was heavy rush in the buses. His bus was also overcrowded and despite his demand, some passengers did not take the tickets, and he could not issue tickets because of illness. He also challenged the enquiry by alleging that the same was not fair and was conducted in violation of the rules of natural justice, inasmuch as he was not given sufficient opportunity to cross-examine the witnesses. Lastly, he pleaded that the punishment of dismissal from service was unduly harsh, unreasonable and shockingly disproportionate.

Respondent Nos.1, 2 and 3 defended the punitive action taken against the petitioner by asserting that he was found guilty of not

issuing tickets to 17 passengers. They averred that the previous conduct of the workman was also not good. On one occasion, his increment was withheld. On another occasion, he was removed from service, but was reinstated.

On the pleadings of the parties, the Tribunal framed two issues viz., whether the evidence produced in the domestic enquiry was sufficient to bring home the charge levelled against the petitioner and whether the punishment imposed on him was disproportionate to the gravity of charge found proved. Another point formulated by the Tribunal was whether the punishment deserves to be modified by invoking the provisions of Section 11-A of the Act.

The learned Chairman of the Tribunal held that the enquiry made against the petitioner was fair and proper; that he was given full opportunity of defence and that the charges were rightly found proved against him. He then considered the issue relating to severity of punishment and concluded that there was no warrant or justification to invoke Section 11-A of the Act. The discussion and conclusion recorded by the learned Chairman are extracted below:

" The workman/claimant was working as conductor in the respondent/management for the last 15 years. During that period, he suffered punishment of deferring increment and was also once removed from service and reinstated afresh in cash and ticket irregularity cases. In view of the previous punishments, the workman/conductor should have been more careful in performing the duties. But once again he has committed serious cash and ticket irregularities. On 24-1-1982 at 11.45 hrs., while the workman/conductor was conducting the bus bearing No.APZ-1901 on the route Yellarthi (stage No.5) to Guntakal (stage No.1), a check was exercised at stage No.10. The checking officials found 81 passengers in the bus. Out of them 17 passengers i.e. 16 adults and one chargeable child are not having tickets. The said passengers were travelling from stage No.15 to stage No.10. The fare that has to be collected from each adult passenger was Rs.1-06 ps. The workman/conductor has violated the rule issue and start. Apart from that, there can be only 17 standing passengers because the seating capacity of the bus was 59. Therefore, it can be said that the bus was not very much overcrowded so as to effect the

movement of the conductor from one place to other. The checking officials recorded the statements of the passengers in the presence of the claimant and also recorded the spot explanation of the conductor. The passengers admitted that they have not paid the fare and they have not taken the tickets. Therefore, the checking officials collected the fares from the passengers and got issued tickets and also imposed fine on the passengers. Though the fault was of the passengers a duty is cast upon the conductor to issue tickets to the passengers by collecting the fares. By allowing such large number of passengers to travel in the bus without tickets that too for such a long distance reveals the dishonest intention. The bus has crossed 5 stages and even then the conductor failed to notice such large number of passengers travelling without tickets.

Though the conductor has taken the plea that he was not well and by mistake he could not issue the tickets, no evidence was let in before the enquiry officer in order to substantiate his defence pleas. The management has examined the witness and also produced records and the enquiry officer has rightly held that the charges are proved. The appellate and review authorities have also confirmed the punishment. The previous conduct of the workman was also very bad. There are no valid and justifiable reasons for modification of the punishment u/s. 11-A of I.D. Act. Therefore, in view of the above referred discussion, point No.1 is decided against the workman/claimant."

Learned counsel for the petitioner argued that even though the charge of carrying 17 passengers without issuing ticket has been proved against the petitioner, the disciplinary authority ought not to have imposed the extreme penalty of removal from service. She emphasized that as on the date of removal, the petitioner had completed 15 years unblemished service, but this factor was altogether ignored by the disciplinary authority while imposing the punishment. She then argued that the learned Chairman of the Tribunal committed a serious error by refusing to exercise power under Section 11-A of the Act. She submitted that the power vested in the Tribunal under Section 11-A is co-extensive with that of the disciplinary authority, and therefore, Chairman of the Tribunal should have modified the punishment of removal and substituted the same

with lesser penalty.

Learned counsel for respondent Nos.1 to 3 defended the petitioner's removal from service by arguing that he is habitual of committing grave misconduct. He emphasized that the disciplinary authority i.e. respondent No.1 had imposed penalty after considering all the relevant factors including the previous conduct of the petitioner and the appellate and reviewing authorities as also the Chairman of the Tribunal did not commit illegality by confirming the punishment of removal from service. He then argued that in exercise of its power under Article 226 of the Constitution, the High Court may not interfere with the discretion exercised by the employer to punish the petitioner, who was found guilty of grave misconduct of not collecting fare and not issuing tickets to 17 passengers.

I have given serious thought to the entire matter. Since the petitioner's counsel has not challenged the finding recorded by the Chairman of the Tribunal on the issue of fairness of enquiry, I do not consider it necessary to deal with that issue. Otherwise also,

I am convinced that the petitioner's grievance regarding violation of rules of natural justice is without any substance and the learned Chairman did not commit any error by declining to interfere with the finding recorded by the enquiry officer and the disciplinary authority on the merits of the charges. Undisputedly, the checking officials had recorded statements of the passengers in the petitioner's presence. His explanation was also recorded on the spot. The passengers admitted that they had not paid the fare and had not taken the tickets. It is also not in dispute that the bus had crossed 5 stages and till then, the petitioner had failed to issue tickets to large number of passengers. The petitioner's plea that he was not well, was not believed by the enquiry officer and the disciplinary authority. The management examined the witnesses and produced record to prove the charge levelled against the petitioner that he was encouraging ticket less travel. The learned Chairman of the Tribunal noted that

previous conduct of the petitioner was also very bad and held that there was no valid ground to modify the punishment.

In my view, the punishment of removal from service imposed on the petitioner cannot be termed as arbitrary, unreasonable or shockingly disproportionate, and the learned Chairman of the Tribunal did not commit any jurisdictional error by refusing to exercise power under Section 11-A of the Act. The misconduct found proved against the petitioner was not an isolated incident. At least on two previous occasions, he was punished for committing misconduct. In one case, the disciplinary authority ordered withholding of his one increment. In the second case, he was removed from service, but was reinstated as per the direction given by the reviewing authority. Therefore, the punishment of removal from service imposed on the petitioner cannot be termed as unjust or unreasonable.

In **Punjab State Civil Supplies Corporation Limited, Chandigarh Vs. Narinder Singh Nirdosh** [6], the Supreme Court reversed the order of Punjab and Haryana High Court, which had invoked the doctrine of proportionality for modifying the punishment of reduction in rank imposed by the employer, and held:

" The Disciplinary Authority, on the basis of the magnitude of the misconduct, is empowered to impose punishment appropriate to the situation. The High Court is not justified in interfering with the punishment of reversion as most lenient view was taken by the Government in this case. The nature of the punishment depends upon the magnitude of the misconduct. Since the misconduct in question is a grave one and the punishment of reversion itself being a very very lenient one, the High Court is wholly incorrect in reducing the punishment which is not at all warranted in law."

In **Mahindra and Mahindra Limited v. N.B.Narawade** [7], the Supreme Court considered the scope of Section 11-A of the Act and held:

" After introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour

Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of the Supreme Court and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being so disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment."

In **M.P.Electricity Board v Jagdish Chandra Sharma** [8], the Supreme Court considered Section 107-A of Madhya Pradesh Industrial Relations Act, 1960, which is pari materia to Section 11-A of the Act and held:

" The scope of Section 107-A of the Madhya Pradesh Industrial Relations Act, 1960 is the same as that of Section 11-A of the Industrial Disputes Act, 1947. The jurisdiction under Section 107-A of the Act to interfere with punishment when it is a discharge or dismissal can be exercised by the Labour Court only when it is satisfied that the discharge or dismissal is not justified. The Tribunal or the Labour Court cannot interfere with the quantum of punishment based on irrational or extraneous factors and certainly not on what it considers a compassionate ground. The jurisdiction vested with the Labour Court to interfere with punishment is not to be exercised capriciously and arbitrarily. It is necessary, in a case where the Labour Court finds the charge proved, for a conclusion to be arrived at that the punishment was shockingly disproportionate to the nature of the charge found proved, before it can interfere to reduce the punishment. When charges proved are grave vis-à-vis the establishment, interference with punishment of dismissal cannot be justified. Similarly, the High Court gets jurisdiction to interfere with the punishment in exercise of its jurisdiction under Article 226 of the Constitution only when it finds that the punishment imposed is shockingly disproportionate to the charge proved."

In **V.Ramana's** case (supra), the Supreme Court considered a series of earlier judgments and laid down the following proposition:

" It is the responsibility of the conductors to collect correct fare charges from the passengers and deposit the same with the Corporation. They act in fiduciary capacity and it would be a case of gross misconduct if they do not collect any fare or the correct amount of fare. A conductor holds a post of trust. A person guilty of breach of trust should be imposed punishment of removal from service."

In **Karnataka State Road Transport's** case (supra), the Supreme Court held that it is misplaced sympathy by courts in awarding lesser punishments where on checking it is found that the bus conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged.

On the basis of above discussion, I hold that the petitioner has failed to make out the case for interference with the award passed by the Chairman of the Industrial Tribunal or the orders passed by the disciplinary, appellate and reviewing authorities and the writ petition is liable to be dismissed. Ordered accordingly.

G.S.SINGHVI, CJ

19.9.2006

msv

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[1] (2001) 2 SCC 574

[2] (2002) 10 SCC 330

[3] (2003) 3 SCC 605

[4] (2005) 3 SCC 254

[5] (2005) 7 SCC 338

[6] (1997) 5 SCC 62

[7] (2005) 3 SCC 134

[8] (2005) 3 SCC 401